
(1998) 04 MP CK 0034
In the Madhya Pradesh High Court
Case No : M.A. No. 396 of 1990

State of M.P.

APPELLANT

Vs

Smt. Sushila Bai Thakur

RESPONDENT

Date of Decision : 22-04-1998

Acts Referred:

Workmens Compensation Act, 1923 — Section 1, 2(1)

Citation : (2000) ACJ 1220 : (1999) 2 JLJ 256 : (1999) 1 MPJR 456 : (1999) 1 MPLJ 597

Hon'ble Judges : S.K. Dubey, J;R.P. Gupta, J

Bench : Division Bench

Advocate : D.P. Agrawal, for the Appellant; Narendra Chouhan, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

This is an appeal u/s 30 of the Workmen's Compensation Act, 1923 (for short "the Act") against the order dated 23-7-1990 passed in Case No. 108/89(Fatal) by the Commissioner for Workmen's Compensation (Labour Court), Jabalpur.

Facts giving rise to this appeal are thus :

The deceased Ravibhan Singh Thakur was employed as Forest Guard in regular establishment under the Field Director, Project Tiger (Kanha) Mandla. On 15-3-1989 during the course of his employment the deceased found a "cheetal" an antelope with white spots resembling a deer entangled in weeds of a water tank. The deceased tried to save the cheetal by removing weeds, but unfortunately he also got entangled in the weeds and met his untimely death. The State and its Field Director did not deposit the compensation before the Commissioner in accordance with the provisions of Chapter II of the Act within one month from the date it fell due. Hence the widow of the deceased filed an application u/s 3 of the Act before the Commissioner to claim compensation for

the death of her husband by an accident arising out of and during course of his employment.

The claim was contested by the appellant on various grounds amongst others that the deceased was not a workman as defined u/s 2(1)(n) of the Act as his employment did not fall under any of categories enumerated in Schedule II of the Act. His duties were exclusive to look after animals specially to look after Tiger within the forest area. It was contended that the work of preservation of wild animals under the Wild Life Preservation Schemes was not a trade or business, therefore, the respondent was not entitled to. any compensation. Besides, the respondent was paid the amount of Rs. 70,437/- the amount of service benefits and was sanctioned a provisional monthly pension of Rs. 350/-.

The Commissioner on the evidence adduced held that the deceased was a workman within the definition of Section 2(1)(n) of the Act. The payment of group insurance, G.P.F. and other service benefit Rs. 70,437/- cannot be termed as compensation as provided by the Act. The State as an employer has failed to deposit the compensation in accordance with the provisions of Chapter II of the Act, therefore, ordered payment of compensation of Rs. 80,072/- within a period of two months in failure of it penalty of Rs. 20,000/- and interest on the amount of compensation at the rate of 6% per annum.

The only substantial question for our consideration is whether the forest guard working under the Field Director, Project Tiger (Kanha) Mandla is a workman u/s 2(1)(n) of the Act, or not. To consider the question it would be proper to refer Section 2(1)(n) and Schedule II, Items (xxii) and (xxiii) which we quote :

"2(1) In this Act, unless there is anything repugnant in the subject or context -

XXX XXX XXX (n) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is -

(i) a railway servant as defined in Section 3 of the Indian Railways Act, 1890 (9 of 1890), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference of his dependants or any of them."

"SCHEDULE II

LIST OF PERSONS WHO SUBJECT TO THE PROVISIONS OF SECTION 2(1)(n) ARE INCLUDED IN THE DEFINITION OF WORKMEN.

The following persons are workmen within the meaning of Section 2(1)(n) and subject to the provisions of that section, that is to say any person who is -

XXX XX XX XX (xxii) employed in the training, keeping or working of elephants or wild animals; or

(xxiii) employed in the tapping of palm-trees or the felling or logging of trees, or the transport of timber by inland waters, or the control or extinguishing of forest fires; or"

The object of the Act is beneficial to do social justice and to provide for speedy and cheap forum for the workman and/or his dependants for claiming compensation on account of unforeseen event (i.e. accident) arising out of and during the course of employment. Keeping in mind the object and purpose of the enactment of the Act the provisions of the Act are required to be interpreted liberally so that the benefits sought to be conferred on the workman or on the dependants of the workman reach them and the same are not lost on account of literal and pedantic approach in interpreting the provisions of the Act.

In order to show that a person is not a workman within the definition it has to be ascertained whether the two ingredients on the facts conjunctively excluded in relation to such a workman, i.e, (1) whether employment of the workman is of a casual nature; and (2) whether he is employed otherwise than for the purpose of the employer's trade or business. In case one of them is absent, the employee cannot be excluded from the purview of the definition. See : State of Gujarat Vs. Rajendra Khodabhai Deshdia and Others, , Kochappan Vs. Krishnan, and Amri Naran and Anr. v. Suken Employees Co-operative Society Ltd.. 1987 Lab 1C 1197 (Gujarat).

In the case in hand admittedly the deceased was in regular employment. His employment was not of a casual nature. But he was employed as a forest guard under the Field Director, Project Tiger (Kanha) Mandla for the purpose of keeping and protecting wild animals and preservation of the forest. The expression "keeping" used in item (xxii) of Schedule II includes preservation of wild animals. Besides the forest guards also do the work of extinguishing the forest fires and watch the felling, logging of trees and transport of timbers, etc. which falls in item (xxiii) of the Schedule II. Therefore, from a bare reading of definition of workman u/s 2(1)(n) and items (xxii) and (xxiii) of Schedule II such a forest guard even he is a civil servant under the State service would not be excluded from the purview of the definition of the workman as the two essential conditions for exclusion of a person from the definition of workman, in the present case, are missing.

A Division Bench of Gujarat High Court in State of Gujarat v. Rajendra Khodabhai Deshdia and Anr. (supra) considered the question of a forest guard under State service after considering the definition of workman Section 2(1)(n) read with Schedule II Item No. (xxiii) held that once it is shown that the workman has been employed for the purpose of trade or business of the employer even though

the employment be of a casual nature, the workman would fall within the definition of workman, provided other conditions are also satisfied. There is nothing in the Act to show that workman holding the post of civil service of the State is excluded from the purview of the term "workman". The duty of the forest guard would be to see that the forest is properly preserved and no part of the forest catches fire, and if it catches fire, the same is extinguished immediately. It will have to be presumed that a forest guard is also required to protect the forest wood and see that the wood is not cut and smuggled out of forest. Therefore, in the facts and circumstances of the case observed that the forest guard falls within the ambit of Section 2(1)(n) of the Act.

A Division Bench of Orissa High Court in Divisional Forest Officer and Others Vs. Noniar Bibi and Others, , while considering the question whether forest guard in the Wild Life Conservation Division of State Government is a workman, within the definition of "workman" u/s 2(1)(n) and Items (xxii) and (xxiii) of Schedule II, held that the Forest Guard in the Wild Life Conservation Division of State Government is a "workman" as the duty of a forest guard primarily is to see that the forest is properly preserved which falls under item (xxiii). His duty also includes preservation of wild animals falling within the meaning of "keeping" under item (xxii). Therefore, such a forest guard is a "workman" who falls within the definition of Section 2(1)(n) of the Act.

In view of the above and that the Commissioner has recorded a categorical finding of fact about the primary duties of deceased workman and the two essential conditions excluding the deceased from the definition of "workman" are not established by the appellant we hold that the deceased was a workman within the definition of Section 2(1)(n) and Items (xxii) and (xxiii) of Second Schedule.

In the result this appeal is devoid of any merit and is dismissed with costs. Counsel Fee Rs. 750/- if pre-certified. C. C. as per rules.